

HOUSE BILL NO. 727

INTRODUCED BY A. OLSON

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DETERMINATION OF VALID OR INVALID VOTES; PROVIDING THAT IN A MANUAL COUNT, IF A VOTE IS NOT CAST ACCORDING TO INSTRUCTIONS, IT MAY NOT BE COUNTED; PROVIDING THAT IN A MACHINE COUNT, IF THE MACHINE DOES NOT RECOGNIZE A VOTE AS A VALID VOTE, THE VOTE MAY NOT BE COUNTED; AND AMENDING SECTIONS 13-1-101 AND 13-15-206, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 13-1-101, MCA, is amended to read:

"13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means an elector who voted in the previous federal general election and whose name is on the active list.

(2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) "Ballot" means:

(a) a paper ballot used with a paper-based system, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots; or

(b) a nonpaper ballot, such as a ballot used with a nonpaper-based system, such as a lever machine, a direct recording electronic machine, or other technology.

(6) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; and

(c) an officeholder who is the subject of a recall election.

(7) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or

(iv) filing fees paid by the candidate.

(8) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(9) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(10) "Elector" means an individual qualified to vote under state law.

(11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

(i) services, food, or lodging provided in a manner that they are not contributions ~~under subsection (7);~~

(ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

(iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or

(iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(12) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(13) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

(14) "Inactive elector" means an individual who failed to vote in the preceding federal general election and whose name was placed on an inactive list pursuant to 13-2-220.

(15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220.

(16) "Individual" means a human being.

(17) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question. For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon approval by the secretary of state of the form of the petition or referral.

1 (18) "Legally registered elector" means an individual whose application for voter registration was
2 accepted, processed, and verified as provided by law.

3 (19) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee,
4 club, union, or other organization or group of individuals or a candidate ~~as defined in subsection (6)~~.

5 (20) "Political committee" means a combination of two or more individuals or a person other than an
6 individual who makes a contribution or expenditure:

7 (a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a
8 petition for nomination; or

9 (b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue;
10 or

11 (c) as an earmarked contribution.

12 (21) "Political subdivision" means a county, consolidated municipal-county government, municipality,
13 special district, or any other unit of government, except school districts, having authority to hold an election for
14 officers or on a ballot issue.

15 (22) "Primary" or "primary election" means an election held throughout the state to nominate candidates
16 for public office at times specified by law, including nominations of candidates for offices of political subdivisions
17 when the time for nominations is set on the same date for all similar subdivisions in the state.

18 (23) "Provisional ballot" means a ballot cast by an elector whose identity and eligibility to vote have not
19 been verified as provided by law.

20 (24) "Provisionally registered elector" means an individual whose application for voter registration was
21 accepted but whose eligibility has not yet been verified as provided by law.

22 (25) "Public office" means a state, county, municipal, school, or other district office that is filled by the
23 people at an election.

24 (26) "Registrar" means the county election administrator and any regularly appointed deputy or assistant
25 election administrator.

26 (27) "Special election" means an election other than a statutorily scheduled primary or general election
27 held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled
28 election.

29 (28) "Statewide voter registration list" means the voter registration list established and maintained
30 pursuant to 13-2-107 and 13-2-108.

(29) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.

(30) "Valid vote" means a vote that has been counted as valid ~~or determined to be valid as provided in~~ pursuant to 13-15-206.

(31) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper or nonpaper ballot."

Section 2. Section 13-15-206, MCA, is amended to read:

"13-15-206. Counting votes -- uniformity -- rulemaking -- definitions. (1) When conducting vote counts as provided by law, a counting board, absentee ballot counting board, or recount board shall count and determine the validity of each vote in a uniform manner as provided in this section.

(2) A manual count of votes cast on a paper ballot must be conducted as follows:

(a) One election judge on the board shall read the ballot while the two other judges on the board shall each record on an official tally sheet the number of valid votes cast for each individual or ballot issue. Write-in votes must be counted in accordance with rules adopted pursuant to subsection ~~(7)~~ (6). If a vote has not been cast according to instructions, the ~~entire ballot must be set aside and counted as provided in subsection (4)~~ vote may not be counted.

(b) (i) After the vote count is complete, the tally sheets of the two judges recording the votes must be compared.

(ii) If the two tallies match, the judges shall record in the pollbook:

(A) the names of all individuals who received votes;

(B) the offices for which individuals received votes;

(C) the total votes received by each individual as shown by the tally sheets; and

(D) the total votes received for or against each ballot issue, if any.

(iii) If the tallies do not match, the count must be conducted again as provided in this subsection (2) until the two tallies match.

(3) (a) Except as provided in subsection (3)(b):

(i) if a vote ~~on a paper ballot or nonpaper ballot~~ is recognized and counted by the system, it is a valid vote;

(ii) if a vote ~~on a paper ballot or nonpaper ballot~~ is not recognized and counted by the system or is

1 recognized as an undervote, it is not a valid vote;

2 (iii) write-in votes must be counted in accordance with rules adopted pursuant to subsection (7).

3 (b) ~~(i) If a paper ballot being counted by a voting system is rejected by the system or if the system~~
4 ~~records an overvote or undervote on a ballot, the ballot must be set aside and counted as provided in subsection~~
5 ~~(4), the vote is not valid and may not be counted.~~

6 ~~———(ii) If an election administrator determines that a voting system is not functioning correctly, the election~~
7 ~~administrator shall follow the procedures prescribed in 13-16-414.~~

8 (c) After all valid votes have been counted and totaled pursuant to ~~subsection (4)~~ and this subsection
9 (3), the judges shall record in the pollbook the information specified in subsection (2)(b)(ii).

10 ~~(4) (a) Each questionable vote on a paper ballot set aside under subsection (2)(a) or (3)(b) must be~~
11 ~~counted if the voter's intent can be clearly determined and agreed upon by a majority of the election judges on~~
12 ~~the counting board in accordance with rules adopted pursuant to subsection (7).~~

13 ~~———(b) After each questionable vote on a ballot set aside under subsection (2)(a) or (3)(b) has been~~
14 ~~determined to be a valid vote, an invalid vote, or an intentional nonvote, the valid votes must be counted~~
15 ~~manually or automatically tabulated by the voting system. If the votes are to be counted manually, the votes must~~
16 ~~be tallied as provided in subsection (2). If the votes are to be counted using a voting system, all valid votes must~~
17 ~~be transferred to a ballot that will be accepted by the voting system and tabulated as provided in subsection (3).~~

18 ~~———(c) Votes counted pursuant to this subsection (4) and the votes initially counted under subsections (2)~~
19 ~~and (3) must be totaled.~~

20 ~~(5)(4)~~ A write-in vote may be counted only if the write-in vote identifies an individual by a designation
21 filed pursuant to 13-10-211(1)(a).

22 ~~(6)(5)~~ A vote is not valid and may not be counted if the elector's choice cannot be determined as
23 provided in this section.

24 ~~(7)(6)~~ The secretary of state shall adopt rules defining a valid vote and a valid write-in vote for each type
25 of ballot and for each type of voting system used in the state. The rules must provide a sufficient guarantee that
26 all votes are treated equally among jurisdictions using similar ballot types and voting systems.

27 ~~(8)(7)~~ Local election administrators shall adopt policies to govern local processes that are consistent
28 with the provisions of this title and that provide for:

29 (a) the security of the counting process against fraud;

30 (b) the place and time and public notice of each count or recount;

1 (c) public observance of each count or recount, including observance by representatives authorized
2 under 13-16-411;

3 (d) the recording of objections to determinations on the validity of an individual vote or to the entire
4 counting process; and

5 (e) the keeping of a public record of count or recount proceedings.

6 ~~(9)~~(8) For purposes of this section:

7 (a) "overvote" means an elector's vote that has been interpreted by the voting system as an elector
8 casting more votes than allowable for a particular office or ballot issue; and

9 (b) "undervote" means an elector's vote that has been interpreted by the voting system as a nonvote."

10 - END -